

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

ROBOCAST, INC.,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

MISC. NO. 13MC-2

**[Case Pending in the United
States District Court for the
District of Delaware, Case No:
1:10-cv-1055-RGA]**

**MICROSOFT CORPORATION’S MOTION FOR EXTENSION OF TIME
TO CONDUCT DEPOSITION OF ROBERT TARABELLA
[EXPEDITED CONSIDERATION REQUESTED]**

Defendant Microsoft hereby requests an extension of time for taking the deposition of Mr. Robert Tarabella, previously ordered by the Court. On March 14, 2013, this Court denied Mr. Tarabella’s Motion to Quash Microsoft’s subpoena and ordered Mr. Tarabella to submit to deposition within 14 days of the Court’s Order “for the express purpose of authenticating the documents produced by his former attorneys on or about February 1, 2013.” (Doc. 8.) As Mr. Tarabella was apparently available for deposition on only one day within the 14-day period, and because the parties were exploring a stipulation in lieu of the deposition (at Mr. Tarabella’s request), the parties mutually agreed to extend the deadline. (*See Ex.*

1.) After determining that a stipulation was not tenable for the documents at issue, the parties scheduled Mr. Tarabella's deposition for Friday, April 12. (*See* Ex. 2.)

The production from Mr. Tarabella's former attorneys (produced by Baker Donelson in Atlanta, Georgia) included a copy of Mr. Tarabella's Station Break software,¹ and Microsoft intends to seek authentication of that software at Mr. Tarabella's deposition, for possible use at trial in the underlying action. As Microsoft explained in its Opposition to Mr. Tarabella's Motion to Quash, discovery relating to the Station Break product—in particular any software demonstrating its functionality, which Microsoft could present to the jury—is highly relevant to Microsoft's invalidity defense in the underlying action. (Doc. 3 at 3.) The copy of the software produced by Mr. Tarabella's former attorneys, however, is incomplete. According to Baker Donelson, the original diskettes with the Station Break software showed signs of corruption, so their vendor was unable to completely convey their contents in the production to Microsoft. Additionally, Baker Donelson is unwilling to provide the original diskettes to Microsoft's counsel and, at most, is willing to make the diskettes available for inspection. Microsoft has since been diligently working with Baker Donelson to evaluate the

¹ Although Microsoft's January 4, 2013 subpoenas to Mr. Tarabella's former attorneys explicitly requested "a copy of the Station Break software" (Doc. 1, Ex. 5), Microsoft did not receive a copy (which was incomplete) of that software until February 20, 2013, several weeks after Microsoft received initial productions from Mr. Tarabella's former attorneys.

extent of the corruption in the data on the diskettes so that Microsoft may attempt, through use of Information Technology vendors, to restore the corrupted portions. Due to these constraints, it has taken longer than Microsoft expected to attempt its restoration work on the diskettes. Now that an on-site inspection has been agreed to, and Microsoft has located a vendor that can bring all of the necessary equipment to the offices of Mr. Tarabella's former attorneys, Microsoft anticipates being able to complete the inspection (and any necessary restoration work) by the end of next week (April 19, 2013).

Microsoft therefore seeks a short three-week continuance of Mr. Tarabella's deposition (through May 2), so that it may authenticate the Station Break software during that deposition. Mr. Tarabella, however, through his counsel, has flatly refused this request, necessitating the instant motion. (*See* Ex. 3 (stating "if Microsoft is not prepared to proceed this Friday morning from 9:00 a.m. to Noon, Mr. Tarabella will not be making himself available for deposition again.")) In light of the relevance of authenticating the Station Break software to the dispute between Microsoft and Robocast Inc. in the underlying action, the minimal additional inconvenience that Mr. Tarabella would suffer from appearing for deposition at a future date instead of on April 12, and the fact that this issue would likely never have arisen had Mr. Tarabella collected the software and produced it in advance of his initial deposition in this matter, Microsoft respectfully asks the

Court to extend the time period in which Microsoft may take Mr. Tarabella's deposition. Given that Mr. Tarabella's deposition is currently scheduled for this Friday, April 12, Microsoft requests a brief teleconference with the Court tomorrow (April 11) at the Court's convenience to resolve this issue on an expedited basis.

Respectfully submitted,

/s/ Michael D. Strasavich

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CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2013, the foregoing document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and that I served the foregoing document by e-mail upon the following:

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